

LESLIE E. DEVANEY  
ANITA M. NOONE  
LESLIE J. GIRARD  
SUSAN M. HEATH  
GAEL B. STRACK  
ASSISTANT CITY ATTORNEYS

KELLY J. SALT  
DEPUTY CITY ATTORNEY

OFFICE OF  
**THE CITY ATTORNEY**  
CITY OF SAN DIEGO

Casey Gwinn  
CITY ATTORNEY

CIVIL DIVISION  
1200 THIRD AVENUE, SUITE 1100  
SAN DIEGO, CALIFORNIA 92101-4100  
TELEPHONE (619) 533-5800  
FAX (619) 533-5856

**MEMORANDUM OF LAW**

**DATE:** June 19, 1998

**TO:** Shari Sacks, Financing Services Manager, Financial and Technical Support Services

**FROM:** Kelly J. Salt, Deputy City Attorney

**SUBJECT:** Use of Moneys from the Special Assessment District Delinquency Fund

**Question Presented**

May moneys deposited into the Special Assessment District Delinquency Fund [Fund] be used to pay for costs incurred by the City in administering assessment districts formed pursuant to the Improvement Act of 1911 (California Streets and Highways Code sections 5000-6794) [1911 Act]?

**Short Answer**

Moneys deposited into the Fund may be used to pay for costs incurred by the City in administering 1911 Act assessment districts.

**Analysis**

The Fund is established pursuant to San Diego Municipal Code section 61.2390. This section provides that the Fund is established to help fulfill the purposes of Chapter VI of the Municipal Code. Chapter VI of the Municipal Code contains various Divisions, among which are Divisions governing the formation of, and the levy and collection of assessments for assessment districts authorized pursuant to the 1911 Act, the Improvement Bond Act of 1915 (California Streets and Highways Code sections 8500-8887) [1915 Act], the Mello-Roos Community Facilities District Act of 1982 (California Streets and Highways Code sections 53311-53368.2) [Mello-Roos Act], and the Landscaping and Lighting Act of 1972 (California Streets and Highways Code sections 22500-22679) [1972 Act].

Pursuant to Municipal Code section 61.2391, when payments for penalty and interest charges are received by the City Treasurer for delinquent amounts assessed to properties under the provisions of the 1915 Act, the Mello-Roos Act, and the 1972 Act, the payments are deposited into the Fund. Delinquency penalties and interest thereon may be retained by the City. *City of Camarillo v. County of Ventura*, 26 Cal. App. 4th 1351 (1994). Interest earnings on moneys deposited into the Fund remain in the Fund. No penalties or interest charges are deposited into the Fund from delinquent assessments for 1911 Act districts because the City does not collect such delinquencies. Cal. Sts. & High. Code §§ 6500-6501.1.

The provisions of Municipal Code section 61.2392 govern the purposes for which moneys deposited into the Fund may be used. This section provides in part that moneys deposited into the Fund may be expended for “[t]he payment of costs incurred in fulfilling the City’s duties under a bond indenture or any similar obligation.” San Diego Municipal Code § 61.2392 A. Administering a 1911 Act assessment district helps fulfill the purposes of Chapter VI of the Municipal Code. Moreover, the financing documents for each 1911 Act assessment district within the City establish certain administrative duties for the City on behalf of each district. Consequently, moneys deposited into the Fund may be used to pay for costs incurred by the City in fulfilling the purposes of Chapter VI and its duties to administer 1911 Act assessment districts.

### **Conclusion**

The Fund was established to fulfill the purposes of Chapter VI of the Municipal Code. One of the purposes of Chapter VI is the formation of, and the levy and collection of assessments for 1911 Act assessment districts. Moneys deposited into the Fund are received from penalty and interest charges imposed on delinquent amounts assessed pursuant to the 1915 Act, the Mello-Roos Act, and the 1972 Act. One of the purposes for which moneys deposited into the Fund may be used is the payment of costs incurred in fulfilling the City’s duties under a bond indenture or similar obligation. The financing documents for each of the 1911 Act assessment districts establishes certain administrative duties for the City on behalf of the districts. The use of the moneys in the Fund to fulfill the duties imposed by these obligations therefore is authorized pursuant to the Municipal Code.

CASEY GWINN, City Attorney

By

Kelly J. Salt  
Deputy City Attorney

KJS:pev:836:(x043.2)

ML-98-15

C:\dmautop\temp\6.wpd